



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

June 21, 1995

Mr. John Hille, Jr.
Assistant County Attorney
Travis County
P.O. Box 1748
Austin, Texas 78767

OR95-408

Dear Mr. Hille:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, Government Code chapter 552. We assigned your request ID# 26169.

The Travis County District Attorney (the "district attorney") has received two requests for information contained in an attempted murder case file. You advise us that the district attorney has made some of the requested information available to the requestors. You object, however, to release of some of the requested information. You have submitted this information to us for review (Exhibit "A") and claim that sections 552.101, 552.107, and 552.108 of the Government Code except it from required public disclosure.

Some of the records submitted to us for review contain information that appears to have been generated by the Texas Crime Information Center or the National Crime Information Center. Title 28, Part 20 of the Code of Federal Regulations limits the release of criminal history information that states obtain from the federal government or other states. Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual law with respect to criminal history information it generates. *Id.* Section 411.083 of the Government Code deems confidential criminal history records that the Department of Public Safety (the "DPS") maintains, except that the DPS may disseminate such records as provided in chapter 411, subchapter F of the Government Code. *See also* Gov't Code § 411.087 (entities authorized to obtain information from DPS are authorized to obtain similar information from any other criminal justice agency; restrictions on disclosure of criminal history information obtained from DPS also apply to criminal history information obtained from other criminal justice agencies). Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency, such as the district attorney, to obtain criminal history record information; however, a criminal justice agency may not release the information except to another criminal justice agency for a criminal justice purpose, *id.* § 411.089(b)(1). Thus, any criminal history record information generated by the federal government or another state may not be made

available to the requestor except in accordance with federal regulations. See Open Records Decision No. 565 (1990). Furthermore, any criminal history record information obtained from the DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with section 411.089(b)(1) of the Government Code.

Section 552.101 of the Government Code excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.107(1) excepts information if "it is information that . . . an attorney of a political subdivision is prohibited from disclosing because of a duty to the client under the Rules of the State Bar of Texas." You assert sections 552.101 and 552.107 in conjunction with attorney work product doctrine. In Open Records Decision No. 575 (1990), this office determined that section 552.101 does not encompass attorney work product, investigative, or other "discovery privileges." Such protection may exist under section 552.103(a) of the Government Code, the "litigation exception," if the situation meets the section 552.103(a) requirements. You have not demonstrated the applicability of section 552.103(a) in this instance. See *Heard v. Houston Post Co.*, 684 S.W.2d 210 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.) (for information to be excepted from public disclosure by section 552.103(a), litigation to which the governmental body is party must be pending or reasonably anticipated and the information must relate to that litigation); see also Open Records Decision No. 551 (1990) at 5.

We note, however, that the issues you raise with respect to attorney work product are the subject of pending litigation in *Holmes v. Morales*, No. 03-94-179-CV, (Tex. App.--Austin argued Feb. 15, 1995). The district court ordered the plaintiff to release the records at issue in the litigation in compliance with rulings from this office. See *Holmes v. Morales*, No. 93-07978 (261st Dist. Ct., Travis County, Tex., Feb. 14, 1994) (copy enclosed). Thus, the attorney general has substantially prevailed in the *Holmes* litigation. *Id.* In light of the pendency of this litigation, however, it would be inappropriate for this office to rule on the claims you raise regarding attorney work product. At this point, it appears that the outcome of the *Holmes* case may determine the resolution of your claims and may moot any decision this office might reach on those claims. For these reasons, we are declining to rule on the issues you raised regarding attorney work product.¹

We remind you that the attorney work product aspect of section 552.103(a) is a discretionary exception under the act. See Gov't Code § 552.007; Open Records Decision No. 542 (1990). Section 552.007 provides as follows:

(a) This chapter does not prohibit a governmental body or its officer for public records from voluntarily making part or all of its

¹Because we have declined to rule on your attorney work product arguments, you may withhold the requested information pending the outcome of the *Holmes* case. Therefore, we need not address your arguments under section 552.108.

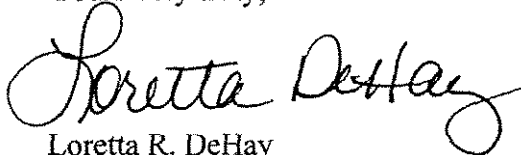
records available to the public, unless the disclosure is expressly prohibited by law or the records are confidential under law.

(b) *Records* made available under Subsection (a) must be made available to any person. [Emphasis added.]

You may therefore choose to release to the public some or all of the requested records for which you claims protection as attorney work product, except that you must withhold criminal history record information as described above.²

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Loretta R. DeHay
Assistant Attorney General
Open Government Section

LRD/rho

Ref.: ID# 26169

Enclosures: Submitted documents
Holmes v. Morales, No. 93-0978
(261st Dist. Ct., Travis County, Tex.,
Feb. 14, 1994)

cc: Ms. Nancy B. Capps
5750 Balcones
Suite 100
Austin, Texas 78781
(w/o enclosures)

²Although a governmental body may choose to waive a discretionary exception such as section 552.103 for particular records, section 552.007 does not prevent a governmental body from subsequently raising the same exception when faced with a request for different records. On the other hand, once a governmental body has disclosed particular records to a member of the public, it may not ordinarily withhold the same records from public disclosure unless the information is confidential by law. See Gov't Code § 552.007; Open Records Decision Nos. 518 (1989), 454 (1986), 436 (1986), 435 (1986).

cc: Ms. Nancy W. Bratton
Ball & Weed
Trinity Plaza II, Suite 500
San Antonio, Texas 78212-3191
(w/o enclosures)